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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. [redacted] 100

ILLINOIS NATURAL GAS COMPANY,
Appellant.

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM OF THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant.

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees,

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

STATEMENT OF MATTERS MAKING AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES SUGGESTED BY APPELLEE, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.

Now comes the Central Illinois Public Service Company, one of the appellees in the above entitled cause, and presents this statement suggesting to the Court matters or grounds making against the jurisdiction of the Supreme Court of the United States asserted by the Appellant.

This appellee believes it to be of importance that there be drawn to the attention of the Court at the outset the fact that this proceeding in no way sought to invoke, nor was there exercised or attempted to be exercised by the State

Commission, any jurisdiction over the gas here in question, or over appellant in any of its dealings with such gas, prior to its delivery into appellant's laterals at their connections with the large transmission main through which it is brought into the State. The jurisdiction which the Commission was asked to, and did, exercise in this proceeding is limited to, and extends back only so far as to include, what transpires subsequent to the delivery of the gas into appellant's laterals.

This appellee also deems it of importance that the facts recited by the Illinois Commerce Commission in its Order and on which it based its findings in this proceeding, stand uncontroverted on the record and are undisputed by appellant.

Parties.

The Appellee Company (hereinafter referred to as "Central Illinois"), an Illinois corporation subject in all respects here in question to the jurisdiction of the Illinois Commission, furnishes natural gas to the public at retail through its distribution systems in Mattoon, Effingham, Paris and Charleston, Illinois, which are interconnected by inter-city mains; and at present procures the gas so distributed from a source other than Appellant, under arrangements insuring only from day to day a supply of natural gas, of lower B. T. U. content and at greater cost than that furnished by appellant.

Appellant (hereinafter referred to as "Illinois Natural") is also an Illinois corporation, and was organized in 1938 to succeed to the ownership and operation of a portion of the property theretofore owned by another Illinois corporation, the Panhandle Illinois Pipe Line Company (hereinafter referred to as "Panhandle Illinois"). This last named Company at that time owned and operated that part located within Illinois, of a large natural gas transmission main

extending from the Texas gas fields across the State of Illinois into Indiana and Michigan, and the laterals leading therefrom to the systems of gas utility companies throughout that portion of Illinois; and was engaged both in transmitting gas into and across the State through its large main, and in supplying gas to Illinois utilities through its laterals.

Facts.

Panhandle Illinois was a subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware Corporation (hereinafter referred to as "Panhandle Eastern"), which is now the owner of the entire large transmission main from the Texas gas fields to Michigan. In February 1938 Illinois Natural, appellant here, and Panhandle Illinois, by joint petition, obtained from the Illinois Commission an Order authorizing the carrying out of a three-party contract providing for the transfer by Panhandle Illinois of its large transmission main extending across the State and all boosting and other equipment incidental to that main, to Panhandle Eastern; and the transfer to Illinois Natural, appellant here, of all Panhandle Illinois' remaining property and assets, including all laterals and their incidental equipment and the entire business of supplying Illinois utilities. The purpose of that proceeding was represented to the Commission by both appellant and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

In that same proceeding appellant procured an Order from the State Commission approving a contract between appellant and Panhandle Eastern for the furnishing by Panhandle Eastern to appellant of all gas required by appellant for resale by appellant to the several distributing companies then, or thereafter to be, served by it; delivery of the gas from Panhandle Eastern to appellant to be at the respective points of connection of appellant's laterals with the large transmission main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas was expressly provided to be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to appellant.

The actions authorized by the Order were taken, and the appellant immediately filed with the Commission its rates, regulations and conditions of service, all of which have been thenceforth adhered to by appellant, except in the present instance, and with all of which appellant admits the Appellee Company, Central Illinois, will comply in obtaining the service here sought. The installation of the approximately twenty miles of lateral required to serve Appellee Company admittedly is within the service appellant holds itself out to perform, and the remuneration to be received by it admittedly is compensatory. Appellant stated to the record in this proceeding that it refrains from rendering the desired service solely because of its contention that the State Commission lacks jurisdiction to require it to render the service.

It further stands undisputed and uncontroverted on the record (1) that appellant has no ownership or interest whatsoever in Panhandle Eastern's large transmission line crossing the State or in any equipment aiding in the boosting of pressure or otherwise facilitating the transmission of gas in that main; this large main and all its incidental

equipment, and their operations are under the exclusive control of Panhandle Eastern; (2) that all laterals from point of their connection with Panhandle Eastern's large transmission main, and all equipment and property in any way entering into the movement of gas after leaving the large transmission main to delivery by appellant to its customers, are exclusively owned and controlled by Illinois Natural, the appellant; (3) that exclusive ownership, control of and responsibility for the gas itself from its receipt by appellant at the points of the laterals' connections to its delivery to appellant's customers is in appellant; (4) that the gas received by appellant is measured at such points of connection in accordance with detailed contract provisions for metering, and is paid for by appellant in accordance with the measurements so ascertained; (5) that appellant owns no public utility property not located in Illinois and not devoted exclusively to business within Illinois, and transacts no business outside the State of Illinois other than that it procures its supply of gas from Panhandle Eastern; (6) that immediately upon receipt of the gas at the points of connection between its laterals and the large transmission main, appellant itself reduces the pressure to such as it desires for economical lateral transportation, and that all other physical treatment and handling of the gas from such points of connection is exclusively by appellant, and occur wholly within Illinois; (7) that no gas passing into appellant's laterals leaves, or is intended to leave, the State of Illinois; (8) that all gas received by appellant is, from the time of its receipt at the points of connection, disposed of by appellant in accordance with rates, rules, regulations and conditions of service on file with and approved by the Commission; and (9) that the record is barren of any evidence or fact tending to show that compliance with the Commission's Order would have any harmful effect whatsoever upon the remaining gas transported by Panhandle Eastern

into or across the State, or upon any operations or business relating to such gas.

This appellee respectfully suggests, that the only facts present on the entire record which in any way distinguish the situation here presented to the Court from what it would be were the gas to be manufactured by appellant, or obtained by it from wells, at the points of its laterals' connections, are (1) that the movement of the gas in appellant's laterals occurs from what remains in the laterals of the pressure applied in Panhandle Eastern's large transmission main, and (2) that Panhandle Eastern, the interstate importer, itself estimates daily the amount of gas required by appellant.

Authorities Relied Upon by Appellee, Central Illinois.

The Natural Gas Act, upon which appellant relies exclusively as divesting the State Commission of jurisdiction in this case, expressly limits its application and effect to the transportation of natural gas in interstate commerce.

52 Stat. at L. 821-33; Title 15, U. S. C. A. 717-717W.

Neither the question of what constitutes interstate commerce, nor the question of what affects interstate commerce to an unwarranted extent, are to be determined by legal formula, but are to be determined from the facts as each individual case arises. "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

Public Utilities Commission v. *Landon*, 249 U. S. 236, 63 L. Ed. 577;

Swift & Co. v. *United States*, 196 U. S. 375, 49 L. Ed. 518;

Foster Fountain Packing Co. v. *Kaydel*, 278 U. S. 1, 73 L. Ed. 147;

Lemke v. *Farmers Grain Co.*, 258 U. S. 50, 66 L. Ed. 458;

Schafer v. *Farmers Grain Co.*, 268 U. S. 189, 69 L. Ed. 909;

Sprout v. *South Bend*, 277 U. S. 163, 72 L. Ed. 833;

Philadelphia & Reading Ry. Co. v. *Hancock*, 253 U. S. 284, 64 L. Ed. 907.

Substance and not form is controlling in determining what is, and what is not, interstate commerce.

Rearick v. *Pennsylvania*, 203 U. S. 507, 51 L. Ed. 295;

Heyman v. *Hays*, 236 U. S. 178, 59 L. Ed. 527;

Savage v. *Jones, State Commission of the State of Ind.*, 225 U. S. 501, 56 L. Ed. 1182;

Swift & Co. v. *United States, supra.*

Continuous movement is not inconsistent with the closing of interstate, and the beginning of intrastate, transportation and commerce where pursuant to and in furtherance of the intentions, purposes and business of the transporters.

Atlantic Coast L. R. Co. v. *Standard Oil Co.*, 275 U. S. 257, 72 L. Ed. 270.

Continuous movement of gas under pressure supplied from without the State, is not of itself incompatible with a change from interstate to intrastate character.

Public Utilities Commission v. *Landon, supra;*

Missouri ex rel. Barrett v. *Kansas Natural Gas Co.*, 256 U. S. 298, 68 L. Ed. 1027;

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171;

Southern Natural Gas Corporation v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970;

Lone Star Gas Co. v. *Texas*, 304 U. S. 224, 82 L. Ed. 1304;

Cloverdale v. *Arkansas-Louisiana Pipe Line Co.*, 303 U. S. 604, 82 L. Ed. 1043.

This Court has held that a change in pressure may have an effect akin to the breaking of an original package, and that the point of reduction in pressure was the end of interstate commerce in gas, even in the absence of separation of ownership or control.

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171.

This Court has recognized that there may be a "distinction between the transportation of gas into a State and the furnishing of the gas so transported to consumers within the State."

Southern Nat. Gas Corp. v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970;

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171.

Under an interpretation by the Supreme Court of Kentucky, that the word "receipt" as used in a State Tax Statute referred to what was done by a retailer after receiving cosmetics imported from without the State rather than taking possession of them upon arrival, this Court held that the "receipt" as so construed related to an intrastate, and not an interstate, transaction.

J. Bacon & Sons v. *James W. Martin*, 305 U. S. 380, 83 L. Ed. 333, 335.

In dealing with facts practically identical with those present in this case, this Court has held that even where the importing company itself dealt with the gas after its importation in a manner substantially identical with that in which the gas here is dealt with by the intermediate appellant company, such subsequent transactions do not constitute interstate commerce.

Southern Nat. Gas Corp. v. *Ala.*, 301 U. S. 148, 81 L. Ed. 970.

The State Supreme Court applied to the facts in this case only rules of law with respect to what constitutes interstate commerce previously well settled by the decisions of this Court, and under such circumstances no substantial Federal question is involved.

Patterson v. *Standard Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231.

The mere fact that Panhandle Eastern estimates the quantity of gas for delivery to appellant should be in no sense controlling. Such estimates, if of any practical value, must necessarily comprehend the aggregate of the consumption by the ultimate consumers in Illinois, and clearly the mere fact of estimation could not operate to make interstate the relations between the Illinois utilities which are supplied by appellant and their ultimate consumers in the various cities served by them.

Authorities Relied Upon by Appellant.

The appellee, Central Illinois, respectfully suggests to the Court that the authorities relied upon by appellant to establish its transactions subsequent to its receipt of the gas as interstate in character, do not support appellant's contention.

The case of *Texas & N. O. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442, the first cited by appellant, concerned shipments of lumber from interior Texas to the purchaser at Texas Gulf ports, but destined at the time of the initial shipment for immediate reshipment by the purchaser from those ports to Europe. The evidence showed that the lumber was ordered manufactured and shipped for export, and that the shipment in Texas was but a step in a complete shipment to foreign destinations. The case could have application to the case here before the Court only upon an assumption that appellant acts merely as an

intermediate step, incident or convenience in a purchase and transportation of gas directly between Panhandle Eastern and appellee, Central Illinois.

The case of *R. R. Commission* v. *Texas & P. R. Co.*, 229 U. S. 336, 57 L. Ed. 1215, the second cited by appellant, is substantially identical in its facts with the case above noted.

In the case of *Western Oil Refining Co.* v. *Lipscomb*, 244 U. S. 346, 61 L. Ed. 1181, there was no intervening independent ownership and control between the Seller and Purchaser, and the handling and treatment of the oil and barrels in Tennessee, where it was sought to be taxed, was merely an intermediate incident or convenience in the completion of the transaction directly between the purchaser and seller.

The case of *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, the fourth cited by appellant, is clearly distinguishable from the situation here presented, in the fact that there existed in that case what amounted to a contract relation between the New York Exchange and Foster. The situation there dealt with was the same in principle as though appellee Company had arranged for its gas with Panhandle Eastern, with both parties contemplating that in transmitting gas from Panhandle Eastern to the appellee Company, the facilities of appellant would be used.

The case of *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, arose over an attempt of the State Commissions to fix the rate to be charged by the importing company, which occupied a position analogous to that of the Panhandle Eastern in the case here before the court. However, even in dealing with that situation, the court pointed out that "the interests of the former" (the importing company) "in the commodity ends with its delivery to the latter" (the distributing company) "to which

title and control thereupon pass absolutely", and then went on to say—"With the delivery of the gas to the distributing companies, however, the interstate movement ends." The court further said—"The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another State, and drawn for distribution directly from interstate mains; * * *. In such case the local interest is paramount * * *".

The case of *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928, involved the right of a State to compel a connection between two railroads, each doing an interstate business.

The case of *Public Utilities Commission of Rhode Island* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 71 L. Ed. 549, holds only that a change of title and possession at the State line may occur without disturbing interstate character.

In the case of *Currin* v. *Wallace*, 306 U. S. 1, 83 L. Ed. 441, the auctions of tobacco there involved were found to be parts of transactions of sale, and the court said that "so far as the sales are for shipment to other states and to foreign countries, it is idle to contend they are not sales in interstate or foreign commerce and subject to commercial regulation. Where goods are purchased in one State for transportation to another, the commerce includes the purchase quite as much as it does the transportation." The analogy here attempted by appellant may fit the appellant's dealings with Panhandle Eastern, but it cannot be maintained as to conditions arising after the interstate sale has been consummated and made to apply to transactions which arise only after appellant's receipt of the gas, and are only between appellant and the utilities which it serves in Illinois.

The three remaining cases, *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117; *Harold B. Fiske* v. *State of Kansas*, 274 U. S. 380, 71 L. Ed. 1108; and *People of the State of New York ex rel. George W. Bryant* v. *Charles F.*

Zimmerman, et al., 278 U. S. 63, 73 L. Ed. 184, cited by appellant in support of its claim of right to appeal, are in no way in conflict with the rule of law which we have heretofore endeavored to present, that where the State court has correctly applied to the facts, rules of law established by the Supreme Court of the United States with respect to what constitutes interstate commerce, no substantial Federal question is involved.

This appellee respectfully and most earnestly suggests that the undisputed facts in this case preclude the existence of a substantial Federal question.

This appellee respectfully further suggests that the real contention of the appellant is, in fact, a claim of immunity from the Order of the Illinois Commission upon the ground that it is entitled to such immunity under the Natural Gas Act; and that appellant has not shown that the State court has held any Federal statute invalid or that there was drawn in question the validity of any statute of the State of Illinois, as is required to authorize a direct appeal to the United States Supreme Court under Section 237 (a) of the Judicial Code.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM DECISION OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

Now comes the Central Illinois Public Service Company, one of the Appellees, and moves this Court to dismiss the appeal taken herein by the Illinois Natural Gas Company on the ground that the case does not present any substantial Federal question; and on the additional ground that, if any Federal question whatever is involved, such question relates only to a claim of immunity under a statute of the United States which is a basis for review only on certiorari under Section 237(b) of the Judicial Code; and this Ap-

pellee further moves, if the motion to dismiss is not granted, that this Court affirm the judgment of the Supreme Court of the State of Illinois on the ground that the Federal question involved is so unsubstantial as to need no further argument, all as appears in the statement of grounds making against the jurisdiction of this Court filed herewith.

Dated this 5th day of May, 1941.

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